

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

Group I: Claims 44-46 and 48-52, drawn to a process of protecting organic material;

Group II: Claims 53-67, drawn to a polymeric composition; and

Group III: Claims 68-69, drawn to a compound.

Applicants elect, with traverse, Group II, Claims 53-67 (drawn to a polymeric composition), for examination.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: “Inventions are related as mutually exclusive species in an intermediate-final product relationship.” Applicants take the position that this assertion by the Office relates only to Groups II and III and not the process of Group I as the process is not included in the Action as presented.

Citing MPEP § 806.05(j), the Office has stated:

“In the instant case, the intermediate product is deemed to be useful as a fertilizer additive and the inventions are deemed patentably distinct because there is nothing on this record to show them to be obvious variants.”

Applicants respectfully disagree and submit that the inventions are related and the MPEP (§806.05(j)) states that related product inventions are distinct if:

“(A) the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive;  
(B) the inventions *as claimed* are not obvious variants; and  
(C) the inventions *as claimed* are either not capable of use together or can have a materially different design, mode of operation, function, or effect.”

Applicants respectfully submit that the Office has not adequately demonstrated any of the indications of distinctness (A), (B) or (C) listed in MPEP (§806.05(j)). Furthermore, there is no evidence of record to show that the intermediate product can be used as a fertilizer additive as the Office has alleged and the Office has provided no examples in support of the conclusion. The Office has simply stated the conclusion.

Applicants respectfully submit that the above-identified application is a U.S. National application filed under 35 U.S.C. 371. MPEP § 1893.03(d) states:

“Examiners are reminded that unity of invention (not restriction) practice is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371.”

Applicants respectfully submit that Rule 13.1 under Unity of Invention indicates that the inclusion of more than one invention in one international application is only permitted if all inventions are so linked as to form a single general inventive concept.

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided sufficient indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion that the groups are distinct. Moreover, lack of unity has not been established and therefore the burden necessary to support an assertion of lack of unity has not been met.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(2) A product and a process of use of said product; . . .”

In addition, The MPEP §806.03 states:

“Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition.”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-III with respect to 37 C.F.R. § 1.475(b)(2) and MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

Customer Number

**22850**

Tel. (703) 413-3000  
Fax. (703) 413-2220  
(OSMMN 08/07)

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

  
Justine M. Wilbur  
Registration No. 59,678